THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25676 OF 2005

09.12.2005

Between:

Delhi Assam Roadways Corporation Limited, Malakpet, Hyderabad

…Petitioner

AND

The District Forest Officer, Adilabad District

and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25676 OF 2005

ORDER:

The petitioner company is engaged in transport business and has a contract with M/s.Bharat Aluminium Company (BALCO), Korba, Chattisghad. On 12.11.2005, the Deputy Range Officer, Gudihathnoor Section stopped the lorry bearing No.KA 05-B 7465 and, on inspection, found that the lorry was allegedly carrying aluminium ingots and teak logs. Therefore a case was registered and a report was submitted to the first respondent. Immediately the petitioner approached the third respondent and submitted representation for release of ingots of BALCO, in vain. Therefore, the present writ petition is filed seeking a direction to the respondents to consider the

representation of the petitioner and pass appropriate orders. In the interlocutory application accompanying the writ petition, the petitioner also seeks a direction to the third respondent to release aluminium ingots belonging to BALCO as well as the lorry, which was seized.

It is the case of the petitioner that it has engaged M/s.Deepak Road Carriers, Raipur to carry aluminium ingots from Raipur to Hyderabad and the driver informed that at Shantapur village of Gudihathnoor Mandal in Adilabad District, some smugglers threatened the driver and cleaner, and forcibly loaded the teak logs into the lorry and that the petitioner is not directly involved in any forest offence. According to the petitioner, the provisions of A.P. Forest Act, 1967 (the Act, for brevity) relating to confiscation of the forest produce and the vehicles do not apply to the case of the petitioner.

The learned Counsel for petitioner has reiterated the submissions as disclosed in the affidavit accompanying the writ petition. **Per contra**, the learned Assistant Government Pleader for Forest made submissions based on the averments in the counter affidavit. According to her, the aluminium ingots were used as tools to commit forest offence, in that forest produce was concealed below aluminium ingots, and therefore the seizure of the lorry and aluminium ingots is justified.

Under the Act, wherever an Officer has reason to believe that a forest offence has been committed in respect of any timber or forest produce, it shall be open to him to seize the same together with the tools, ropes and vehicles. Under sub section (2-A) of Section 44 of the Act, it shall be competent to the authorized officer to confiscate the timber or forest produce along with the vehicles used in committing such offence. Sub section (2-C) of Section 44 of the Act carves out an exception to the rule in Section 44 (2-A) of the Act by creating a right to the owner of the vehicle to plead and prove that the vehicle involved was used without the knowledge or connivance of the owner. In this case, two submissions are raised with regard to the authority of the forest officials to seize aluminium ingots, which were the main commodity being carried in the lorry seized and the authority of the forest officials in seizing the lorry, which was carrying aluminium ingots especially when they were allegedly carried under force or duress. These are the matters which essentially require some sort of enquiry into the facts. The possibility of other non-forest commodity being employed to camouflage the smuggled forest produce cannot be ruled out as rightly submitted by the learned Assistant Government Pleader. However, this Court hastens to add that this is a matter, which has to be enquired into by the forest officer.

As per the provisions of the Act, Authorized Officer to consider the question of confiscating the forest produce/tools/vehicles is the District Forest Officer and admittedly no application to that effect is moved by the petitioner. Therefore, liberty is given to the petitioner to file an application for interim custody/release of the ingots as well as the lorry pending further orders in the main confiscation proceedings. As and when such application is made, the first respondent shall consider the matter and pass appropriate orders within a period of one week from the date of receipt of

the application. It shall be open to the petitioner to raise all the grounds including the ground that the petitioner as a transport company was only carrying the ingots of BALCO to Hyderabad and it is not the owner of the ingots.

The writ petition, with the above observations and directions, is, accordingly, disposed of. No costs.

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(**V.V.S.RAO, J**)

December 09, 2005.

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NOTE:

Dispatch order copy today.

(B/o)

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